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10 Attorneys for Plaintiffs,  
11 SONY BMG MUSIC ENTERTAINMENT;  
12 ARISTA RECORDS LLC; UMG RECORDINGS,  
13 INC.; BMG MUSIC; and WARNER BROS.  
14 RECORDS INC.

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 DIVISION

18 CV 08 8/1/08  
19 CASE NO. \_\_\_\_\_

20 COMPLAINT FOR COPYRIGHT  
21 INFRINGEMENT

22 JCS

23 SONY BMG MUSIC ENTERTAINMENT, a  
24 Delaware general partnership; ARISTA  
25 RECORDS LLC, a Delaware limited liability  
26 company; UMG RECORDINGS, INC., a  
27 Delaware corporation; BMG MUSIC, a New  
28 York general partnership; and WARNER BROS.  
RECORDS INC., a Delaware corporation,

Plaintiffs,

v.

OCAPUNITAN IVY AKA O.C. IVY,

Defendant.

## **JURISDICTION AND VENUE**

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. §101 *et seq.*).

2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. §1331 (federal question); and 28 U.S.C. §1338(a) (copyright).

3. This Court has personal jurisdiction over the Defendant, Ocapunitan Ivy (AKA O.C. Ivy), and venue in this District is proper under 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400, because, on information and belief, the Defendant resides in this District and/or a substantial part of the acts of infringement complained of herein occurred in this District.

## PARTIES

4. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general partnership, with its principal place of business in the State of New York.

5. Plaintiff Arista Records LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

6. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

7. Plaintiff BMG Music is a general partnership duly organized and existing under the laws of the State of New York, with its principal place of business in the State of New York.

8. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

9. Plaintiffs are informed and believe that Defendant is an individual who resided in Antioch, California, within this District at the time of the infringement complained of herein. Upon information and belief, Defendant may still be found in this District.

**COUNT I****INFRINGEMENT OF COPYRIGHTS**

10. Plaintiffs incorporate herein by this reference each and every allegation contained in  
each paragraph above.

11. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of  
exclusive rights under United States copyright law with respect to certain copyrighted sound  
recordings, including but not limited to, all of the copyrighted sound recordings on Exhibit A to this  
Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted  
Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright  
Registration issued by the Register of Copyrights, for which the Plaintiffs are the owners as specified  
on Exhibit A.

12. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the  
exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted  
Recordings to the public.

13. Much of the unlawful distribution of copyrighted sound recordings over the Internet  
occurs via "peer-to-peer" ("P2P") file copying networks or so-called online media distribution  
systems. P2P networks, at least in their most popular form, refer to computer systems or processes  
that enable Internet users to search for files (including audio recordings) stored on other users'  
computers and transfer exact copies of files from one computer to another via the Internet, which can  
include both downloading an exact copy of that file onto the user's own computer and distributing an  
exact copy of that file to other Internet users on the same P2P network. P2P networks enable users  
who otherwise would have no connection with, or knowledge of, each other to provide a  
sophisticated search mechanism by which users can locate these files for downloading and to  
reproduce and distribute files off of their personal computers.

14. Users of P2P networks who distribute files over a network can be identified by using  
Internet Protocol ("IP") addresses because the unique IP address of the computer offering the files  
for distribution can be captured by another user during a search or a file transfer. Users of P2P  
networks can be identified by their IP addresses because each computer or network device (such as a

1 router) that connects to a P2P network must have a unique IP address within the Internet to deliver  
2 files from one computer or network device to another. Two computers cannot effectively function if  
3 they are connected to the Internet with the same IP address at the same time.

4 15. Plaintiffs identified an individual using LimeWire on the P2P network Gnutella at IP  
5 address 75.18.161.28 on August 22, 2007 at 00:54:14 EDT distributing 413 audio files over the  
6 Internet. The Defendant was identified as the individual responsible for that IP address at that date  
7 and time. Plaintiffs are informed and believe that as of August 22, 2007, Defendant, without the  
8 permission or consent of Plaintiffs, had continuously used, and continued to use, a P2P network to  
9 download and/or distribute to the public the Copyrighted Recordings. Exhibit A identifies the date  
10 and time of capture and a list of Copyrighted Recordings that Defendant has, without the permission  
11 or consent of Plaintiffs, downloaded and/or distributed to the public. Through Defendant's  
12 continuous and ongoing acts of downloading and/or distributing to the public the Copyrighted  
13 Recordings, which acts Plaintiffs believe to have been ongoing for some time, Defendant has  
14 violated Plaintiffs' exclusive rights of reproduction and distribution. Defendant's actions constitute  
15 infringement of Plaintiffs' copyrights and exclusive rights under copyright.

16 16. In addition to the sound recordings listed on Exhibit A, Plaintiffs are informed and  
17 believe that Defendant has, without the permission or consent of Plaintiffs, continuously downloaded  
18 and/or distributed to the public additional sound recordings owned by or exclusively licensed to  
19 Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of infringement are  
20 ongoing.

21 17. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on  
22 each respective album cover of each of the sound recordings identified in Exhibit A. These notices  
23 of copyright appeared on published copies of each of the sound recordings identified in Exhibit A.  
24 These published copies were widely available, and each of the published copies of the sound  
25 recordings identified in Exhibit A was accessible by Defendant.

26 18. Plaintiffs are informed and believe that the foregoing acts of infringement have been  
27 willful and intentional, in disregard of and indifference to the rights of Plaintiffs.

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1       19. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights  
2 under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for  
3 Defendant's infringement of each of the Copyrighted Recordings. Plaintiffs further are entitled to  
4 their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

5       20. The conduct of Defendant is causing and, unless enjoined and restrained by this  
6 Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated  
7 or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502  
8 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing  
9 Plaintiffs' copyrights, and ordering Defendant to destroy all copies of sound recordings made in  
10 violation of Plaintiffs' exclusive rights.

11       WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

12       1. For an injunction providing:

13       "Defendant shall be and hereby is enjoined from directly or indirectly  
14 infringing Plaintiffs' rights under federal or state law in the  
15 Copyrighted Recordings and any sound recording, whether now in  
16 existence or later created, that is owned or controlled by Plaintiffs (or  
17 any parent, subsidiary, or affiliate record label of Plaintiffs)  
18 ("Plaintiffs' Recordings"), including without limitation by using the  
19 Internet or any online media distribution system to reproduce (i.e.,  
20 download) any of Plaintiffs' Recordings, to distribute (i.e., upload) any  
21 of Plaintiffs' Recordings, or to make any of Plaintiffs' Recordings  
22 available for distribution to the public, except pursuant to a lawful  
23 license or with the express authority of Plaintiffs. Defendant also shall  
24 destroy all copies of Plaintiffs' Recordings that Defendant has  
25 downloaded onto any computer hard drive or server without Plaintiffs'  
26 authorization and shall destroy all copies of those downloaded  
27 recordings transferred onto any physical medium or device in  
28 Defendant's possession, custody, or control."

2       2. For statutory damages for each infringement of each Copyrighted Recording  
22 pursuant to 17 U.S.C. § 504.

3       3. For Plaintiffs' costs in this action.

4       4. For Plaintiffs' reasonable attorneys' fees incurred herein.

5. For such other and further relief as the Court may deem just and proper.

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4 Dated: July 1, 2008

HOLME ROBERTS & OWEN LLP

5  
6 By  
7

  
8 DAWNIELL ZAVALA  
9 Attorney for Plaintiffs  
10 SONY BMG MUSIC ENTERTAINMENT;  
11 ARISTA RECORDS LLC; UMG RECORDINGS,  
12 INC.; BMG MUSIC; and WARNER BROS.  
13 RECORDS INC.

# **EXHIBIT A**

**EXHIBIT A****OCAPUNITAN IVY (AKA O.C. IVY)**

IP Address: 75.18.161.28 2007-08-22 00:54:14 EDT

**CASE ID#** 139798067**P2P Network:** Gnutella**Total Audio Files:** 413

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
SONY BMG MUSIC ENTERTAINMENT	The Ataris	The Boys of Summer	So Long, Astoria	332-822
Arista Records LLC	Brooks & Dunn	Rock My World	Hard Workin' Man	168-005
CMDG Recordings, Inc.	Lifehouse	You And Me	Lifehouse	370-643
BMG Music	Natalie Imbruglia	Torn	Left of the Middle	246-607
BMG Music	Brad Paisley	She's Everything	Time Well Wasted	366-007
UMG Recordings, Inc.	The All-American Rejects	Can't Take It	Move Along	374-412
SONY BMG MUSIC ENTERTAINMENT	Crossfade	Colors	Crossfade	354-126
Warner Bros. Records Inc.	Michael Buble	Home	Home (single)	370-204
Arista Records LLC	Monica	Angel of Mine	The Boy is Mine	263-982
SONY BMG MUSIC ENTERTAINMENT	Dixie Chicks	Hello Mr. Heartache	Fly	275-086